

Public Utility Commission of Texas

7800 Shoal Creek Boulevard
Austin, Texas 78757-1098
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Pat Wood, III
Chairman

Robert W. Gee
Commissioner

Judy Walsh
Commissioner

May 15, 1996

Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

RE: CC Docket No. 96-98 (FCC 96-182)
In the Matter of Implementation of the
Local Competition Provisions in the
Telecommunications Act of 1996

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To the Secretary:

Enclosed herewith for filing with the Commission are an original plus sixteen copies of the Comments of the Public Utility Commission of Texas in the above captioned matter. These comments address only the portions of the Notice relating to Dialing Parity, Number Administration, and Access to Rights of Way. The remainder of comments are provided in a separate filing as instructed by the Notice. By a copy of this transmittal, we are also providing an electronic copy of the filing as requested.

Please acknowledge receipt by affixing an appropriate notation on the duplicate copy of this letter furnished herewith for that purpose and returning same to the undersigned in the enclosed, self-addressed envelope.

Sincerely,

Vicki Oswalt
Director, Office of Policy Development

cc: ITS, Inc.
Ms. Gloria Shambley, Common Carrier Bureau (3 copies)

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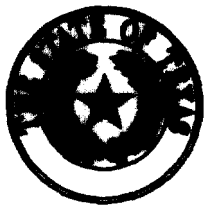
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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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**In the Matter of)
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Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)**

CC Docket No. 96-98

**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS
ON DIALING PARITY, ACCESS TO RIGHTS-OF-WAY,
AND NUMBER ADMINISTRATION**

**Pat Wood, III, Chairman
Robert W. Gee, Commissioner
Judy Walsh, Commissioner**

May 13, 1996

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

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CC Docket No. 96-98

**COMMENTS OF THE
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ON DIALING PARITY, ACCESS TO RIGHTS-OF-WAY,
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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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CC Docket No. 96-98

**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS
ON DIALING PARITY, ACCESS TO RIGHTS-OF-WAY,
AND NUMBER ADMINISTRATION**

I. Introduction

1. In its Notice of Proposed Rulemaking (Notice) adopted on April 19, 1996,¹ the Federal Communications Commission (FCC) initiated a rulemaking to consider and implement the local competition provisions in §§ 251, 252, and 253 of the Telecommunications Act of 1996 (1996 Act).² The Public Utility Commission of Texas (Texas PUC), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submits these Comments on dialing parity, access to rights-of-way, and number administration. (The Texas PUC is filing separate comments responding to many other local competition issues on which the Notice requests comments.)

¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182 (April 19, 1996).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et seq.).

II. Dialing Parity

2. The Notice seeks comment on what implementation schedule should be adopted for dialing parity obligations for all LECs.³ The Texas PUC is dealing with this issue in the context of intraLATA 1+ and 0+ dialing parity in several proceedings. AT&T Communications of the Southwest, Inc. filed a petition for rulemaking seeking expedited implementation of 1+ and 0+ intraLATA equal access. The petition was filed on March 7, 1996, and was assigned Texas PUC Project No. 15487. On April 25, 1996, the Texas PUC denied AT&T's petition, but invited comment on whether PURA95 §3.219 has been preempted by any provision of the 1996 Act, or if these statutes may be reconciled in such a manner as to avoid preemption. A copy of the Texas PUC's Order in Project No. 15487 is provided as Attachment I for your reference.

3. PURA95 §3.219(a) states that generally, "while any local exchange company in this state is prohibited by federal law from providing interLATA telecommunications services, the local exchange companies in this state ...shall be exclusively designated or authorized to receive ["0+" and "1+" dialed intraLATA] calls." The precise question in Project No. 15487 is whether parties view this section to be in conflict with §271(e)(2) in the 1996 Act, which addresses implementation of dialing parity by BOCs. Parties have until May 10, 1996 to provide comments to the Texas PUC on this issue. The Texas PUC staff is ordered to present a recommendation on this issue at the June 5, 1996, Open Meeting.

³ Notice, para. 212.

4. The Texas PUC is also addressing the intraLATA 1+ and 0+ dialing parity issue in two pending contested cases: Docket No. 15711, *Complaint of AT&T Communications of the Southwest, Inc. Against GTE Southwest Incorporated, GTE TSI and GTE Card Services, Inc. d/b/a GTE Long Distance*, and Docket No. 15688, *Application of GTE Southwest, Inc. and Contel of Texas, Inc. for Approval of Flat-Rated Local Exchange Resale Tariffs Pursuant to PURA95 §3.2532*.

III. Access to Rights-of-Way

5. The Notice requests comments on the meaning of the term "non-discriminatory" as it relates to access provided to poles, ducts, conduits, and rights of way.⁴ The Texas Interconnection Rule requires that:

Interconnecting CTUs shall allow each other non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting CTU has obtained all required authorizations from the property owner and /or appropriate governmental authority.⁵

The term "non-discriminatory" is defined as the "type of treatment that is not less favorable than that an interconnecting CTU provides to itself, or its affiliates or other CTUs."⁶ Furthermore, PURA95 expressly prohibits a municipality from discriminating against a local exchange carrier in the granting of consent, franchises, and permits for access to facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways.⁷

⁴ Notice, para. 221.

⁵ PUC Subst. R. 23.97(d)(2)(H).

⁶ PUC Subst. R. 23.97(b)(13).

⁷ PURA95, §3.2555.

6. The Notice seeks comment on specific standards under §224(f)(2) for determining when a utility providing electric service has “insufficient capacity” to permit access to poles, ducts, conduits, and rights-of-way.⁸ It also seeks comment on when such access may be denied for “reasons of safety, reliability and generally applicable engineering purposes.” If the FCC feels that it does not have sufficient expertise in these areas, the Texas PUC suggests that the FCC could seek guidance by referring to Federal Energy Regulatory Commission standards on these subjects.

IV. Number Administration

a. Selection of a neutral number administrator

7. The Notice seeks comment on the FCC’s tentative conclusion that the *NANP Order*⁹ satisfies the requirement of §251(e)(1) of the 1996 Act that the FCC designate an impartial number administrator.¹⁰ The Texas PUC concurs with this tentative conclusion.

b. State role in numbering administration

8. The Notice seeks comment on whether the FCC should delegate matters involving the implementation of new area codes, such as the determination of area code boundaries, to the state commissions so long as they act consistently with the FCC’s numbering administration guidelines.¹¹ The Texas PUC concurs with the FCC’s tentative conclusion that such matters should be delegated to the state commissions.

⁸ Notice, para. 223.

⁹ *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, FCC 95-283 (rel. July 13, 1995) (*NANP Order*) (*recon. pending*).

¹⁰ Notice, para. 252.

¹¹ Notice, para. 256.

9. The Notice also seeks comment regarding the *Ameritech Order*,¹² which sought to clarify the scope of authority of the FCC and the states with respect to numbering administration, and which set forth some broad guidelines for evaluating area code relief plans.¹³ The Texas PUC appreciates the FCC's efforts to delineate areas of responsibility and to guide the states in the implementation of new area codes. The Texas PUC respectfully suggests, however, that the FCC revisit the *Ameritech Order* so as to clearly permit states to implement innovative means of area code relief in a manner that meets the guidelines found in the *Ameritech Order* (and the *NANP Order*).¹⁴ The Texas PUC believes that the *Ameritech Order* guidelines can and should be interpreted to allow for innovative means of area code relief which are carefully crafted to balance the interests, benefits, and burdens for all interested parties. If the FCC determines that the *Ameritech Order* does not permit such an interpretation, the Texas PUC urges that the *Ameritech Order* be overruled.

10. The Notice also seeks comment on what action the FCC should take when a state appears to be acting inconsistently with the FCC's numbering administration guidelines.¹⁵ The Texas PUC respectfully suggests that, in light of the need for prompt resolution (as pointed out in

¹² *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order*, 10 F.C.C.R. 4596 (1995) (*Ameritech Order*) (*recon. pending*).

¹³ Notice, paras. 256-257.

¹⁴ On May 10, 1996, the Texas PUC filed with the FCC an application for expedited review of action taken pursuant to delegated authority and a petition for expedited declaratory ruling. Both filings ultimately seek a determination from the FCC that the NANP administrator should assign area codes to Southwestern Bell Telephone Co. to use for prospective wireless overlays in the Dallas and Houston areas. See Notice, para. 257, n.358 regarding Letter from Geraldine A. Matise, Chief, Network Services Division, Common Carrier Bureau, FCC to Ronald R. Conners, Director, North American Numbering Plan Administration (April 11, 1996).

¹⁵ Notice, para. 257.

the Notice, para. 257), the FCC could establish a policy allowing for expedited consideration of requests for declaratory relief as to area code relief plans when there is a dispute as to whether a state has acted in accordance with the FCC's numbering administration guidelines. Such an expedited procedure should be available to a state commission itself or to any party to a relevant state commission proceeding. The availability of expedited declaratory rulings on area code issues: (1) would aid the Texas PUC and other state commissions in avoiding actions that are inconsistent with the FCC's guidelines; and (2) would allow the FCC to further clarify its position on the jurisdictional balance between the FCC and the states on numbering administration.

11. Finally, the Notice seeks comment on whether the FCC should delegate to Bellcore, the LECs, and the states the authority to continue performing their functions related to the administration of numbers, as those functions existed prior to enactment of the 1996 Act until such functions are transferred to the new NANP administrator pursuant to the NANP Order.¹⁶ The Texas PUC concurs with the FCC's tentative conclusion that such delegation should continue. The language of the comment request, however, suggests that the functions performed by the LECs and the states will also be handed over to the new NANP administrator upon the new NANP administrator's assumption of those functions previously carried out by Bellcore. The Texas PUC agrees that the NANP administrator should assume the functions performed by the LECs; however, the Texas PUC suggests that the FCC clarify the states' roles in number administration by expanding on statements in the *Ameritech Order* and elsewhere regarding the balance of authority between the FCC and the states.

¹⁶ Notice, para. 258.

V. Conclusion

12. The Texas PUC recognizes that the FCC has quite a challenge before it in developing rules for local competition that balance all interests. The Texas PUC has been struggling with these same difficult issues as it has been implementing its new state telecommunications law, PURA95. The Texas PUC looks forward to working with the FCC in a cooperative partnership that will bring about an effective and efficient transition to competitive local exchange markets.

Respectfully submitted,

Public Utility Commission of Texas

7800 Shoal Creek Blvd.

Austin, Texas 78757

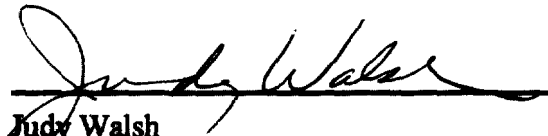
May 13, 1996



Pat Wood, III
Chairman



Robert W. Gee
Commissioner



Judy Walsh
Commissioner

Attachment I

Order

PUC Docket No. 15487

**Petition Of AT&T Communications Of The Southwest, Inc. For
Implementation Of 1+ And 0+ Equal Access And Expedited Rulemaking**

PROJECT NO. 15487

APR 25 PM 1 50

PUBLIC UTILITY COMMISSION
FILING CLERK

**PETITION OF AT&T
COMMUNICATIONS OF THE
SOUTHWEST, INC. FOR
IMPLEMENTATION of 1+ AND 0+
EQUAL ACCESS AND EXPEDITED
RULEMAKING**

§
§ **PUBLIC UTILITY COMMISSION**
§
§ **OF TEXAS**
§
§

ORDER

In public meeting in its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above-styled petition has been processed in accordance with the requirements of §2001.021 of the Government Code and 16 T.A.C. §22.281.

The petition is denied, for the following reason: the Commission finds that the rule proposed by the petitioner does not reflect the interests of all stakeholders interested in the issue of 1+ and 0+ intraLATA dialing parity.

The Commission also finds that there is a need for a rule addressing intraLATA dialing parity to be in place at such time as the law requires. The Commission received comments pursuant to 16 T.A.C. §22.281. Some of these comments addressed the issue of when the law requires intraLATA dialing parity in light of the provisions of §3.219 of the Public Utility Regulatory Act (PURA) and §271(e)(2). et. al, of the federal Telecommunications Act of 1996 (FTA).

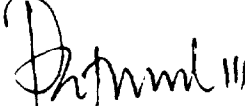
The Commission invites any party to file comments regarding whether PURA §3.219 has been preempted by any provision of the FTA, or if these statutes may be reconciled in such a manner as to avoid preemption. Comments (16 copies) may be submitted by May 10, 1996 to Paula Mueller, Secretary of the Commission, 7800 Shoal

Creek Boulevard, Austin, Texas 78757. Comments should refer to Project No. 15487. Copies of previously filed comments in this project may be obtained from the Commission's Central Records office.

The Office of Regulatory Affairs (ORA) shall report to the Commission at the June 5, 1996 Open Meeting with a summary of comments received and a recommendation for resolution of the legal issue. At that time, ORA shall also present a summary of relevant information on the issue of intraLATA 1+ and 0+ dialing parity from Projects 13008, 13219, and 13220.

SIGNED AT AUSTIN, TEXAS, on this 24th day of April, 1996.

PUBLIC UTILITY COMMISSION OF TEXAS



PAT WOOD, III, CHAIRMAN

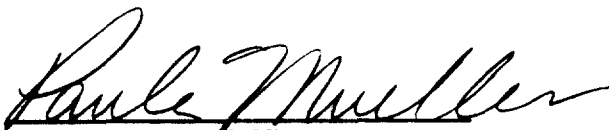


ROBERT W. GEE, COMMISSIONER



JUDY WALSH, COMMISSIONER

ATTEST:



**PAULA MUELLER
SECRETARY OF THE COMMISSION**